



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**WAGGONER CARR
ATTORNEY GENERAL**

September 14, 1965

Honorable F. T. Graham
Criminal District Attorney
Cameron County
Brownsville, Texas

Opinion No. C- 504

Re: Whether those county clerks
now incumbent are required
during their current terms
to bring themselves and
their respective staffs
under the provisions of
Article 1937, Vernon's Civil
Statutes, as amended by
House Bill 125, Acts of the
59th Legislature, 1965.

Dear Mr. Graham:

You have inquired as to whether those county clerks
now incumbent are required during their current terms to bring
themselves and their respective staffs under the provisions of
Article 1937, Vernon's Civil Statutes, as amended by House Bill
125, Acts of the 59th Legislature, 1965.

The amended Article 1937, which under Section 39,
Article III of the Texas Constitution becomes effective on
August 30, 1965, 90 days after the adjournment of the 59th
Legislature, provides in part:

"Section 1. Each county clerk shall, before
entering upon the duties of his office, give bond
. . . and shall also take and subscribe the of-
ficial oath which shall be endorsed on the bond . . .

"Section 2. . . . Each deputy and each em-
ployee shall be covered under bond for the same
conditions and in the same amount as the county
clerk . . ."

Those clerks now in office are bonded pursuant to the
requirements of Article 1937 as it stood prior to amendment. The
legislature has failed to provide that the bonds of those now
incumbent should be increased to the new minimum rates set forth

in the amended Article 1937. The provisions of Section 1 are by their clear and unambiguous terms limited to the county clerk when qualifying for his office. There is, however, authority under Article 6002, Vernon's Civil Statutes, for those counties wishing to require increased bond of him. Said Article provides:

"When the commissioners court becomes satisfied that the bond of any county officer which has been approved by said court is from any cause insufficient, they shall require a new bond or additional security to be given. Said court shall cause said officer to be cited to appear at a term of their court not less than five days after service, and shall take such action as they deem best for the public interest, and their decision shall be final and no appeal shall lie therefrom."

In the absence of an action by the commissioners court pursuant to Article 6002, it is our opinion that there is nothing in Article 1937 which would automatically require the county clerk to bring his bond up to meet the new minimum requirements. There is a well settled policy against judicial findings of abrupt breaks or changes in the law unless the legislature has clearly indicated that such was intended. Adams v. Rockwall County, 280 S.W. 759 (Tex.Comm.App. 1926). You are therefore advised that unless the commissioners court acts under Article 6002 to require him to do so, the county clerk now incumbent need not increase his bond. However, he will continue to be required to keep his bond at the level required of him upon entering office for his current term. Where the legislature has simultaneously repealed and re-enacted a statute, it will be presumed that the original statute continues in force until such time as the act as re-enacted becomes effective or operative. McMullen v. Guest, 6 Tex. 275 (1851); Handel v. Elliott, 60 Tex. 145 (1883). This presumption should be especially strong in the instant case where the requirements of the new statute are more stringent than those of the old.

You are further advised that the coverage of Section 2 of Article 1937 as amended, would not, by the clear terms of such section, become operational independently of Section 1. Therefore, so long as the county clerk is not brought within the

Hon. F. T. Graham, page 3 (C-504)

coverage of Section 1 of the amended act, his subordinates will not come within the coverage of Section 2.

Neither does Section 3 of Article 1937, which provides how the bonds set forth in the first two sections will be payable, make any requirement independently of the first two sections.

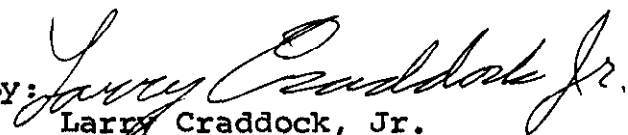
We are enclosing herewith our recent Opinion C-506 which fully answers your third question.

SUMMARY

Those county clerks now incumbent are not required during their current term of office to bring themselves and their respective staffs under the provisions of Article 1937, Vernon's Civil Statutes, as amended by House Bill 125, Acts of the 59th Legislature, 1965.

Yours very truly,

WAGGONER CARR
Attorney General

By: 
Larry Craddock, Jr.
Assistant

LC:ra

APPROVED:
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